

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

NEIL JASON WILLIAMS,

Petitioner,

v.

**Civil Action No. 2:06cv124
(Judge Maxwell)**

THOMAS MCBRIDE, Warden,

Respondent.

ORDER DENYING APPOINTMENT OF COUNSEL

This case is before the Court on the *pro se* petitioner's Motion for Appointment of Federal Public Defender. In the motion, the petitioner asserts that he is indigent, that the issues in this case are complex, and that he does not have the expertise to continue to defend this action. Therefore, the petitioner seeks the assistance of "licensed legal counsel."

The authority for the Court to appoint counsel in a § 2254 action is discretionary; there is no Constitutional right to have appointed counsel in post conviction proceedings. Pennsylvania v. Finley, 481 U.S. 551 (1987). A Court may appoint counsel to a financially eligible person if justice so requires in a § 2254 action. See 28 U.S.C. § 2254(h); 18 U.S.C. § 3006(A). The appointment of counsel for a petitioner who qualifies under 18 U.S.C. § 3006(A), is only required under § 2254 when necessary for utilization of discovery procedures and when an evidentiary hearing is required. See Rules 6(a) and 8(c) of the Rules Governing Section 2254 cases in the United States District Courts.

Upon a review of the file, the undersigned notes that the respondent has filed a motion for summary judgment in this case. See dckt. 16. Therefore, the need for discover or an evidentiary

hearing is not readily apparent. Moreover, a review of the petition shows that the issues in this case are not complex. Thus, the petitioner's motion for appointed counsel (dckt. 25) is **DENIED**.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner and to transmit a copy to counsel of record electronically.

DATED: November 30, 2007.

/s *John S. Kaull*
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE